

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

ANDREW GREGORY SPOTTED ELK,

Plaintiff,

vs.

AW BENTENE, in their official capacity;  
ALEX HANSON, S.I.U., in their individual and  
official capacity; TROY ELLISE, Restrictive  
Housing Hearing Board member, in their  
individual and official capacity; R.  
VANDEREA, Restrictive Housing Board  
Member, in their individual and official  
capacity; D. BIEBER, Restrictive Housing  
Hearing Board Member, in their individual and  
official capacity; JEN DRIESKE, in her  
individual capacity; JESSICA COOK, a/k/a Mrs.  
Cook, Associate Warden Jameson, in her  
individual and official capacity; JEANNIE  
BERTCH, a/k/a J. Bertch, Restrictive Housing  
Manager, Associate Warden Jameson, in her  
individual and official capacity; ERIC  
TIMMERMAN, Restrictive Housing Staff  
Member, in his official capacity; SETH  
HUGHES, A-Floor Unit Manager, in his official  
capacity; TROY PONTO, Deputy Warden, in  
his official capacity; LT. M. JONES,  
Disciplinary Hearing Officer, in their official  
capacity; TIFFANY STOYNOV, Unit  
Coordinator, in her individual and official  
capacity; UNIT COORDINATOR BUOL, Unit  
Coordinator, in their official capacity; CATHY  
WYNIA, Special Investigator (SIU), in her  
individual and official capacity; M. WARD,  
Case Manager, in their individual and official  
capacity; UNIT COORDINATOR PECHOUS,  
A-Floor Unit Coordinator, in their official  
capacity; CHAD ROTERT, Associate Warden,  
in his individual and official capacity; TERESA  
BITTINGER, in her official capacity; KELLIE  
WASKO, in her official capacity,

Defendants.

4:22-CV-04031-LLP

ORDER DENYING PLAINTIFF'S  
REQUEST FOR PRODUCTION OF  
DOCUMENTS AND REQUEST FOR  
CLARIFICATION

Plaintiff Andrew Gregory Spotted Elk, an inmate at the South Dakota State Penitentiary, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc. 1. This Court screened Spotted Elk's complaint, dismissing it in part and directing service upon the remaining defendants. Doc. 12. After the defendants answered Spotted Elk's complaint, this Court entered a scheduling order and two amended scheduling orders. Docs. 32, 37, 38, 40, 42. Spotted Elk now filed a request for production of documents, Doc. 43, and a request for clarification, Doc. 44.

### **I. Request for Production of Documents**

Spotted Elk filed a request for production of documents seeking his South Dakota Division of Criminal Investigation (DCI) interview tapes as well as copies of the following information: (1) his prison records; (2) all Prison Rape Elimination Act investigations about him; (3) all documents directly or indirectly regarding him; (4) his mental health records; (5) his medical records; (6) grievances filed by him and the responses; (7) all rules, regulations, and policies for restrictive housing from 2019 through 2020 and 2023 through 2024; (8) all of his housing records; (9) all investigative reports against him that resulted in criminal charges; (10) "statistics of Prison Rape Elimination Act being unfounded and unsubstantiated [sic] for South Dakota state prisons and those claims that were to have been found as falsified also"; (11) documents regarding his restrictive housing; and (12) DCI interview transcripts. Doc. 43 at 1–2.

Federal Rule of Civil Procedure Rule 5(d)(1)(A) provides that "discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing[.]" *See also* D.S.D. Civ. LR 26.1.A ("Pursuant to Fed. R. Civ. P. 5(d), depositions, interrogatories, *requests for documents*, requests for admissions, and answers and responses thereto must not be filed." (emphasis added)). Thus, Spotted Elk's request for production of documents, Doc. 43, is denied. If Spotted Elk wishes to conduct discovery, he may do so, but he must do so in accordance with Federal Rules of Civil Procedure 26, 33, 34, and 36, and seek the information

from the opposing party. If the defendants refuse to comply and Spotted Elk does not believe the refusal is justified, then Spotted Elk may seek court intervention pursuant to Rule 37.

## **II. Request for Clarification**

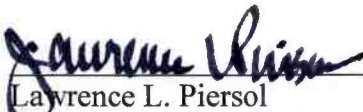
Spotted Elk claims that he “is unaware if he is to respond to any documents by defendants and asks the court if such exist.” Doc. 44. The Court has no duty to advise Spotted Elk about his obligations to respond and cannot act as Spotted Elk’s lawyer. *See Bennett v. Dr. Pepper/Seven Up, Inc.*, 295 F.3d 805, 808 (8th Cir. 2002) (identifying that a district court is not responsible for advising a pro se litigant of the date by which he is required to respond to a defendant’s motion); *Pliler v. Ford*, 542 U.S. 225, 231 (2004) (“District judges have no obligation to act as counsel or paralegal to *pro se* litigants.”). Thus, Spotted Elk’s request for clarification, Doc. 44, is denied.

Accordingly, it is ORDERED:

1. That Spotted Elk’s motion to compel discovery, Doc. 43, is denied.
2. That Spotted Elk’s request for clarification, Doc. 44, is denied.

DATED July 10, 2024.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:  
MATTHEW W. THELEN, CLERK

  
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